APPENDIX A.

The Underlying Theory of the Case.

The underlying theory of this case is that if a person negligently obstructs a public thoroughfare over which he knows the fire department may be required to go to extinguish a fire, he is liable at common law for the damages caused by such negligent obstruction. A leading case on this point arose in Illinois,—*Houren* v. *Chicago, etc. Railway Company*, 236 Ill. 620 (1908). There a building adjacent to plaintiff's home was on fire. While the fire department was answering the alarm, one of defendant's freight trains, more than three blocks long, stopped across a public highway, preventing access of the fire apparatus to the fire for thirty minutes. (236 Ill. at 623.) During the delay, plaintiff's home caught fire and was damaged. A verdict for the plaintiff was affirmed.

In discussing the duty of care involved in such a case, the Supreme Court of Illinois said (236 Ill. at 625):

> "* * * appellant * * * contends that a prudent and experienced man, fully acquainted with all the circumstances which existed at the time the train was left upon the street, would not have thought it reasonable that the house in question would have been destroyed by fire as a consequence of the obstruction of the street, and that for this reason the damages are not such as could be recovered on account of the unlawful act in question. It is not necessary that the burning of this particular house could have been foreseen. It is only damages of the character of those which occurred, to-wit, damages by fire, that must have been within the range of the consequence of the act reasonably to be expected. It seems clear to us that if a prudent man of experience had reflected upon the probable consequences of entirely closing up this

> street in a great city he would have foreseen, first, that to so close the street would obstruct and delay public travel thereon; second, that among the travel liable to be so obstructed and delayed would be the passage of teams, engines and other appliances of the fire department; third, that if the travel of the fire department was so obstructed and delayed, any fire which the men of that department were seeking to reach would be more extensive and do greater damage than if the obstruction and delay had not taken place."

Just so, "a prudent man of experience" would, upon reflection, foresee the same possibilities in the event of the obstruction of the South Branch of the Chicago River by the failure to lift defendants' bridge, which would block the passage of a fire boat.

That the right of navigation over navigable waters is paramount, and that bridgetenders must explain any delay or obstruction of navigation, was established in *Clement* v. *Metropolitan El. Ry. Co.*, 123 F. 271 (7 C. C. A.; 1903). In that case the Circuit Court of Appeals for the Seventh Circuit said:

> "Such a structure must be so maintained and operated that navigation may not be impeded more than is absolutely necessary, the right of navigation being paramount." (123 F. at 273.)
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> "It was incumbent upon the appellee by his answer to set forth specifically for the information of the court the facts which prevented compliance with duty and which would excuse non-performance by alleging exculpatory facts, if any, showing that inability to perform a known duty arose from no neglect of its own. * * * Failing to raise the bridge promptly when it had ample notice of the approach of the vessel, the respondent must be held guilty of neglect of duty. Failing to show that the delay was unavoidable, the presumption of negligence attaches, which it was its duty to overcome." (123 F. at 274.)

APPENDIX B.

List of Authorities Holding That Evidence of the Precise Physical Cause of a Plaintiff's Injuries, or an Unsuccessful Attempt by Plaintiff to Prove the Specific Negligence of the Defendant Will Not Deprive Plaintiff of His Right to Rely on Res Ipsa Loquitur.

Chicago City Railway v. *Carroll*, 206 Ill. 318, 324-325.

Masten v. *Cousins*, 216 Ill. App. 268, 272.

Gleeson v. *Va. Midland Railway Company*, 140 U. S. 435.

San Juan Light & Transit v. *Requena*, 224 U. S. 89, 98.

Pennsylvania Company v. *Clark*, 266 Fed. 182, 187.

Neal v. *T. Eaton Co., Ltd.*, 1933-3 D. L. R. 306.

Rex v. *Canadian Tug Boat Co., Ltd.*, 1933 E. C. C. 104.

The Merchant Prince, 1892-P. D. 179 (Ct. of Appeals).

Partin's Admr. v. *Black Mountain Corp.*, 248 Ky. 32, 58 S. W. (2d) 234 (1933).

Kleinman v. *Banner Laundry Co.*, 150 Minn. 515, 186 N. W. 123, 124 (1921).

Colorado Springs, etc., Ry. Co. v. *Reese*, 69 Colo. 1, 169 Pac. 572, 575 (1917).

Kickels v. *Fein*, 104 Ind. App. 606, 10 N. E. (2d) 297, 301 (1937).

Shea v. *Hern*, 132 Me. 361, 171 Atl. 248, 250 (1934).

Union Gas & Electric Co. v. *Waldsmith*, 31 Oh. App. 118, 166 N. E. 588, 590 (1929).

Nashville, etc. R. Co. v. *Gregory*, 137 Tenn. 422, 193 S. W. 1053, 1055 (1917).

Dearden v. *San Pedro, etc., R. Co.*, 33 Utah 147, 93 Pac. 271, 273 (1907).

Humphrey v. *Twin State Gas & Electric Co.*, 100 Vt. 414, 139 Atl. 440, 445 (1927).

Highland v. *Wilsonian Investment Co.*, 171 Wash. 34, 17 Pac. (2d) 631, 633 (1932).